

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3, 421.14, and 452A.59, the Department of Revenue hereby amends Chapter 67, “Administration,” and Chapter 68, “Motor Fuel and Undyed Special Fuel,” Iowa Administrative Code.

The amendments are necessary to reflect the enactment of 2015 Iowa Acts, Senate File 257. 2015 Iowa Acts, Senate File 257, modifies the rate of excise taxes on motor fuel and special fuel, and it establishes a biodiesel distribution percentage formula. The amendments also update terminology and references to the Iowa Code.

Notice of Intended Action was published in IAB Vol. XXXVIII, No. 5, p. 351, on September 2, 2015, as **ARC 2123C**. The Department received one comment from the public regarding the provisions on blending errors in rule 701—68.4(452A). The commenter requested that the Department modify the proposed amendments to adopt a 1 percent tolerance for blending errors, consistent with industry standards. The Department agreed with adopting a 1 percent tolerance for blending errors, which resulted in changes to paragraphs 68.4(2)“c” and 68.4(3)“c.”

After analysis and review of this rule making, the Department finds that the amendments related to 2015 Iowa Acts, Senate File 257, are likely to have a positive impact on jobs. The Legislative Services Agency estimated that the rate change for motor fuel and special fuel for motor vehicles will increase deposits to the road use tax fund by about \$200 million per fiscal year from FY 2016 through FY 2020. As expressed in the Act, the General Assembly intended that a significant amount of these increased deposits will fund critical road and bridge construction projects, which will create jobs. The Legislative Services Agency also estimated that the rate change for aviation special fuel (aviation jet fuel) will increase deposits to the state aviation fund by \$790,000 per fiscal year from FY 2016 through FY 2020. Increased deposits to the state aviation fund will create jobs by funding additional airport grants, aviation-related services, special projects, and statewide planning.

These amendments are intended to implement Iowa Code section 452A.3 as amended by 2015 Iowa Acts, Senate File 257.

These amendments will become effective on December 30, 2015.

The following amendments are adopted.

ITEM 1. Amend rule **701—67.1(452A)**, definitions of “Blender” and “Supplier,” as follows:

“*Blender*” means a person who owns and blends ~~ethanol with gasoline~~ two or more fuels, including ethanol or biodiesel, at a nonterminal location to produce ethanol blended gasoline and blends the product at a nonterminal location or biodiesel blended fuel. The person is not restricted to blending ethanol with gasoline or biodiesel with diesel. ~~Products blended with gasoline other than ethanol are taxed as gasoline. “Blender” also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. The blend is taxed as a special fuel according to its fuel and alcohol content, which may result in additional tax due or an allowable refund for the blender. See rule 701—68.4(452A).~~

“*Supplier*” means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline fuel; a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, biofuel, biodiesel, alcohol, or alcohol derivative substances; or a person who produces, manufactures, or refines motor fuel or special fuel in this state. “Supplier” includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. “Supplier” does not include a retail dealer or wholesaler who merely blends alcohol with gasoline or biofuel with diesel before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

ITEM 2. Adopt the following **new** definitions of “B-11,” “Biodiesel distribution percentage” and “Petrodiesel” in rule **701—67.1(452A)**:

“*B-11*” means biodiesel blended fuel formulated with a minimum percentage of 11 percent by volume of biodiesel, if the formulation meets the standards provided in Iowa Code section 214A.2. A similar notation refers to biodiesel blended fuel containing other percentages of biodiesel. For example, “B-5” means biodiesel blended fuel formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided in Iowa Code section 214A.2.

“*Biodiesel distribution percentage*” means the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state during the determination period. The determination period is the previous calendar year.

“*Petrodiesel*” means petroleum-based diesel fuel. Petrodiesel contains no biodiesel.

ITEM 3. Amend rule 701—67.21(452A) as follows:

701—67.21(452A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections ~~422.52(3)~~ 423.35 and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

67.21(1) and 67.21(2) No change.

This rule is intended to implement Iowa Code sections ~~422.52(3)~~ 423.35 and 452A.66.

ITEM 4. Amend subrule 68.2(1) as follows:

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004) 20.5¢ per gallon (for July 1, 2004, through June 30, 2005) 20.7¢ per gallon (for July 1, 2005, through June 30, 2006) 21¢ per gallon (for July 1, 2006, through June 30, 2007) 20.7¢ per gallon (for July 1, 2007, through June 30, 2008) 21¢ per gallon (for July 1, 2008, through June 30 <u>February 28, 2015</u>) <u>31¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>30.8¢ per gallon (beginning July 1, 2015)</u>
LPG	20¢ per gallon
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through June 30 <u>February 28, 2015</u>) <u>29¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>29.3¢ per gallon (beginning July 1, 2015)</u>
E-85 gasoline	17¢ per gallon beginning (for January 1, 2006, through June 30, 2007) 19¢ per gallon (for July 1, 2007, through June 30 <u>February 28, 2015</u>) <u>29¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>29.3¢ per gallon (beginning July 1, 2015)</u>
Aviation gasoline	8¢ per gallon (<u>beginning July 1, 1988</u>)
Special fuel (biodiesel, diesel, LNG)	22.5¢ per gallon

<u>Diesel fuel other than B-11 or higher</u>	<u>22.5¢ per gallon (on and before February 28, 2015)</u> <u>32.5¢ per gallon (beginning March 1, 2015)</u>
<u>Biodiesel blended fuel (B-11 or higher)</u>	<u>22.5¢ per gallon (on and before February 28, 2015)</u> <u>32.5¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>29.5¢ per gallon (beginning July 1, 2015)</u>
<u>Special fuel (aircraft) Aviation jet fuel</u>	<u>3¢ per gallon (on and before February 28, 2015)</u> <u>5¢ per gallon (beginning March 1, 2015)</u>
<u>L.P.G.</u>	<u>20¢ per gallon (on and before February 28, 2015)</u> <u>30¢ per gallon (beginning March 1, 2015)</u>
<u>C.N.G.</u>	<u>21¢ per gallon 16¢ per 100 cu. ft. (on and before June 30, 2014)</u> <u>21¢ per gallon (for July 1, 2014, through February 28, 2015)</u> <u>31¢ per gallon (beginning March 1, 2015)</u>
<u>L.N.G.</u>	<u>22.5¢ per gallon (on and before February 28, 2015)</u> <u>32.5¢ per gallon (beginning March 1, 2015)</u>

ITEM 5. Amend subrule 68.2(2) as follows:

68.2(2) Fuel distribution percentages.

a. Ethanol distribution percentage.

(1) Except as otherwise provided in this ~~subrule paragraph, until June 30, 2015~~ subrule paragraph, after June 30, 2015 for March 1, 2015, through June 30, 2020, this ~~subrule paragraph~~ shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the ethanol distribution percentage. The ethanol distribution percentage is the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

Ethanol Distribution %	Ethanol Tax	Gasoline Tax
00/50	19.0 <u>29.0</u>	20.0 <u>30.0</u>
50+/55	19.0 <u>29.0</u>	20.1 <u>30.1</u>
55+/60	19.0 <u>29.0</u>	20.3 <u>30.3</u>
60+/65	19.0 <u>29.0</u>	20.5 <u>30.5</u>
65+/70	19.0 <u>29.0</u>	20.7 <u>30.7</u>
70+/75	19.0 <u>29.0</u>	21.0 <u>31.0</u>
75+/80	19.3 <u>29.3</u>	20.8 <u>30.8</u>
80+/85	19.5 <u>29.5</u>	20.7 <u>30.7</u>
85+/90	19.7 <u>29.7</u>	20.4 <u>30.4</u>
90+/95	19.9 <u>29.9</u>	20.1 <u>30.1</u>
95+/100	20.0 <u>30.0</u>	20.0 <u>30.0</u>

(2) Except as otherwise provided in this ~~subrule paragraph, after June 30, 2015~~ subrule paragraph, after June 30, 2020, an excise tax of ~~20~~ 30 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

b. Biodiesel distribution percentage.

(1) Except as otherwise provided in this paragraph, for July 1, 2015, through June 30, 2020, this paragraph shall apply to the excise tax imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the biodiesel distribution percentage. The biodiesel distribution percentage is the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state. The number of gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles distributed in this state shall be based on the total taxable gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

<u>Biodiesel Distribution %</u>	<u>B-11 or Higher Tax</u>	<u>Other Than B-11 or Higher Tax</u>
<u>00/50</u>	<u>29.5</u>	<u>32.5</u>
<u>50+/55</u>	<u>29.8</u>	<u>32.5</u>
<u>55+/60</u>	<u>30.1</u>	<u>32.5</u>
<u>60+/65</u>	<u>30.4</u>	<u>32.5</u>
<u>65+/70</u>	<u>30.7</u>	<u>32.5</u>
<u>70+/75</u>	<u>31.0</u>	<u>32.5</u>
<u>75+/80</u>	<u>31.3</u>	<u>32.5</u>
<u>80+/85</u>	<u>31.6</u>	<u>32.5</u>
<u>85+/90</u>	<u>31.9</u>	<u>32.5</u>
<u>90+/95</u>	<u>32.2</u>	<u>32.5</u>
<u>95+/100</u>	<u>32.5</u>	<u>32.5</u>

(2) The determination period for the biodiesel distribution percentage is January through December each calendar year. Prior to July 1, 2015, Iowa licensees did not separately report the total taxable gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state. Accordingly, the department cannot calculate the biodiesel distribution percentage for calendar years 2014 and 2015 using the method described in subparagraph 68.2(2)“b”(1). However, the best information available to the department indicates the biodiesel distribution percentage is not greater than 50 percent for calendar years 2014 and 2015. Therefore, for the period between July 1, 2015, and June 30, 2016, and for the period between July 1, 2016, and June 30, 2017, the rates for the excise tax on special fuel for diesel engines of motor vehicles are based on a biodiesel distribution percentage of 00/50%.

(3) Except as otherwise provided in this paragraph, for the period between March 1, 2015, and June 30, 2015, and for the period after June 30, 2020, an excise tax of 32.5 cents is imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state.

c. Legislative review. The ethanol distribution percentage, the biodiesel distribution percentage, and the corresponding excise tax rates are subject to legislative review at least every six years. The review is based upon a fuel distribution percentage formula status report, which contains the recommendations of a legislative interim committee appointed to conduct a review of the fuel distribution percentage formulas. The report is prepared with the assistance of the Iowa department of revenue and the Iowa department of transportation. The report includes recommendations for changes or revisions to the fuel distribution percentage formulas based upon advances in technology, fuel use trends, and fuel price fluctuations observed during the preceding six-year interval; an analysis of the operation of the fuel distribution percentage formulas during the preceding six-year interval; and a summary of issues that

have arisen since the previous review and potential approaches for resolution of those issues. The first report will be submitted to the general assembly no later than January 1, 2020, with subsequent reports developed and submitted by January 1 at least every sixth year thereafter.

ITEM 6. Amend subrule 68.2(4), introductory paragraph, as follows:

68.2(4) The department shall determine the actual tax paid for E-85 gasoline in the previous calendar year and compare this amount to the amount that would have been paid using the tax rate imposed in Iowa Code section 452A.3, subsection 1 or ~~1A 2~~. If the difference is less than \$25,000, the tax rate for the tax period beginning the following July 1 shall be 17¢ per gallon. If the difference is \$25,000 or more, the tax rate shall be the rate in effect pursuant to Iowa Code section 452A.3, subsection 1 or ~~1A 2~~.

ITEM 7. Amend rule 701—68.4(452A) as follows:

701—68.4(452A) Ethanol blended gasoline Blended fuel taxation—nonterminal location.

68.4(1) *Responsibilities of all blenders at nonterminal locations.* A person who blends ethanol blended gasoline or biodiesel blended fuel at a nonterminal location must obtain a blender’s license. Blending ethanol with gasoline, or blending biodiesel with petrodiesel, may result in additional tax due or an allowable refund depending on the alcohol content of the mixture and the tax paid on its components. The blender must make payment to the department for the additional tax due. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE 1. A blender blends three parts ethanol with 17 parts gasoline to create E-15. The E-15 is taxed as ethanol blended gasoline, and the blender may be due a refund for excess tax paid on the gasoline used.

EXAMPLE 2. A blender blends one part biodiesel with four parts petrodiesel to create B-20. The B-20 is taxed as B-11 or higher, and the blender may be due a refund for excess tax paid on the petrodiesel used.

EXAMPLE 3. A blender blends one part biodiesel with 19 parts petrodiesel to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the biodiesel used.

EXAMPLE 4. A blender blends one part B-20 with five parts B-2 to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the B-20 used.

68.4(2) *Blenders of ethanol blended gasoline.*

68.4(1) a. ~~Blenders~~ A blender who ~~own~~ owns the alcohol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier (~~20¢ per gallon~~). The blender must obtain a blender’s license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of ~~this subrule and subrules 68.4(2) and 68.4(3)~~ the following example, the tax rate for gasoline is presumed to be ~~20¢~~ 30¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be ~~19¢~~ 29¢ per gallon. The actual tax ~~rate~~ rates for the appropriate period is ~~are~~ shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ($7,200 \times .20$) =	\$1,440.00	\$2,160.00
Blender adds 800 gallons untaxed alcohol		\$.00
Total tax paid on products	\$1,440.00	\$2,160.00
Total tax due on 8,000 gallons ethanol blended product gasoline ($8,000 \times .19$) =	\$1,520.00	\$2,320.00
Additional Amount Due	\$ 80.00	\$160.00

68.4(2) b. ~~Blenders~~ A blender who ~~purchase~~ purchases alcohol and gasoline from a supplier must pay tax ~~of \$.19 per gallon~~ on both the alcohol purchased and ~~\$.20 per gallon~~ on the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended

product. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be 29¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ($7,200 \times .20$) =	\$1,440.00	\$2,160.00
Blender purchases 800 gallons tax-paid alcohol ($800 \times .19$) =		<u>152.00</u>
Total tax paid on products		<u>\$1,592.00</u>
Total tax due on 8,000 gallons ethanol blended product gasoline ($8,000 \times .19$) =	\$1,520.00	<u>\$2,320.00</u>
Amount of Refund Allowable		<u>\$72.00</u>

~~68.4(3)~~ c. Ethanol blended gasoline—blending errors. For periods beginning July 1, 1978, to June 30, 2000.

Where a blending ~~errors occur~~ error occurs and an insufficient amount of alcohol has been blended with motor fuel gasoline so that the mixture fails to qualify as ethanol blended gasoline as defined in Iowa Code section 452A.2(6) 452A.2, a 1 percent tolerance applies in determining the tax ~~shall be determined on the blended product as follows~~ described in this paragraph:

~~a. (1)~~ (1) If the amount of the alcohol ~~erroneously blended with motor fuel gasoline is short by five gallons or less per blend at least 9 percent of the total blended product by volume~~, the alcohol and motor fuel gasoline blended product is ~~to be~~ considered ethanol blended gasoline and there ~~will be~~ is no penalty or assessment of additional tax.

~~b. (2)~~ (2) If the alcohol and motor fuel mixture is short of alcohol by more than five gallons but the alcohol blended with the motor fuels is short by 1.01 percent or less of such mixture, the motor fuel must be divided for tax purposes into ethanol blended gasoline and motor fuel containing no alcohol as follows:

That portion of alcohol must be added to motor fuel on the basis of one part alcohol to nine parts motor fuel to determine the portion which is considered ethanol blended gasoline and have a tax status as such. The portions of motor fuel remaining are to be considered taxable motor fuel subject to tax at the prevailing rate.

~~e.~~ If the amount of alcohol ~~erroneously blended with motor fuel gasoline is short by more than 1.01 percent of the total blend less than 9 percent of the total blended product by volume~~, the total blend of motor fuel gasoline and alcohol is subject to tax as motor fuel gasoline at the prevailing rate of tax.

(3) This paragraph applies only if a blender intends to produce ethanol blended gasoline. If a blender does not intend to produce ethanol blended gasoline when blending alcohol and gasoline, and the mixture contains less than 10 percent alcohol by volume, no error has occurred and the mixture is subject to tax as gasoline.

(4) The following ~~formula will be~~ formulas are used to compute blending errors:

Actual gasoline + actual alcohol = total gallons of blended product

Total gallons of blended product \times .09 = required alcohol

Motor fuel \div 9 = required alcohol

Misblended ethanol blended gasoline \times .0101 = gallons of alcohol tolerance

Required alcohol — actual alcohol is less than or equal to gallons of alcohol short

Actual alcohol \times 9 = motor fuel portion of ethanol blended gasoline

Motor fuel portion of ethanol blended gasoline \pm actual alcohol = ethanol blended gasoline

Actual motor fuel — motor fuel portion of ethanol blended gasoline = motor fuel

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend ethanol blended gasoline. Figures are rounded to the nearest whole gallons gallon; ethanol blended gasoline is taxed at ~~\$.19~~ \$.29 per gallon; motor fuel gasoline is taxed at ~~\$.20~~ \$.30 per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1:

Motor fuel	Actual gasoline	=	8,000 gal.
Alcohol	Actual alcohol	=	800 gal.
Total blended product		=	8,800 gal.
8,000 ÷ 9		=	889 gal. required alcohol
8,800 × .0101	.09	=	89 792 gal. required alcohol tolerance
889	— 800	=	89 gal. short of alcohol

89 is equal to 89 The actual alcohol (800 gallons) is more than the required alcohol (792 gallons), which means that the tax is applied according to paragraph “b” above subparagraph 68.4(2) “c”(1) as follows:

8,800 gal. of blended product ×	\$.29	=	\$2,552 tax on ethanol blended gasoline
800 × 9		=	7,200 gal. motor fuel portion of ethanol blended gasoline
7,200 + 800		=	8,000 gal. of ethanol blended gasoline
8,000 — 7,200		=	800 gal. of motor fuel subject to tax
8,000 gal. of alcohol × \$.19		=	\$1520 tax on ethanol blended gasoline
800 gal. of motor fuel × \$.20		=	\$ 160
TOTAL		=	\$1680 (\$1520 + \$160)

EXAMPLE 2:

Motor fuel	Actual gasoline	=	8,000 gal.
			8,010
Alcohol	Actual alcohol	=	795 790 gal.
Total blended product		=	8,800 gal.
8,000 ÷ 9		=	889 gal. required alcohol
8,795	8,800 × .0101	.09	= 89 792 gal. required alcohol tolerance
889	— 795	=	94 gal. short of alcohol

94 is greater The actual alcohol (790 gallons) is less than 89 the required alcohol (792 gallons), which means that the entire blend is considered motor fuel gasoline and the tax is applied according to paragraph “c” above subparagraph 68.4(2) “c”(2) as follows:

8,795	8,800 gal. of blended product × \$.20	\$.30	=	\$1759.00 \$2,640 tax on gasoline
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EXAMPLE 3:

Motor fuel		=	8,000 gal.
Alcohol		=	885 gal.
8,000 ÷ 9		=	889 gal. required alcohol
889 gal. — 885 gal.		=	4 gal. short of alcohol

This total blend is considered ethanol blended gasoline because the blend is short by less than 5 gallons. The tax would be as follows:

$$8,885 \text{ gal.} \times \$.19 = \$1688.15$$

68.4(3) Blenders of biodiesel blended fuel.

a. A blender who owns the biodiesel (supplier) being used to blend with diesel must purchase the diesel from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 29¢ per gallon and the tax rate for diesel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

<u>Blender purchases 7,120 gallons tax-paid petrodiesel (7,120 × .325) =</u>	<u>\$2,314.00</u>
<u>Blender adds 880 gallons untaxed biodiesel =</u>	<u>\$.00</u>
<u>Total tax paid on products =</u>	<u>\$2,314.00</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

<u>Total tax due on 8,000 gallons blended B-11 or higher (8,000 × .29) =</u>	<u>\$2,320.00</u>
<u>Additional Amount Due =</u>	<u>\$6.00</u>

EXAMPLE 2.

<u>Blender purchases 7,600 gallons tax-paid petrodiesel (7,600 × .325) =</u>	<u>\$2,470.00</u>
<u>Blender adds 400 gallons untaxed biodiesel =</u>	<u>\$.00</u>
<u>Total tax paid on products =</u>	<u>\$2,470.00</u>

The blended product is 8,000 gallons of diesel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

<u>Total tax due on 8,000 gallons diesel other than B-11 or higher (8,000 × .325) =</u>	<u>\$2,600.00</u>
<u>Additional Amount Due =</u>	<u>\$130.00</u>

EXAMPLE 3.

<u>Blender purchases 7,750 gallons tax-paid B-2 (7,750 × .325) =</u>	<u>\$2,518.75</u>
<u>Blender adds 250 gallons untaxed biodiesel =</u>	<u>\$.00</u>
<u>Total tax paid on products =</u>	<u>\$2,518.75</u>

7,750 gallons of B-2 contains 155 gallons (2%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 405 gallons (155 + 250, or 5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

<u>Total tax due on 8,000 gallons diesel other than B-11 or higher (8,000 × .325) =</u>	<u>\$2,600.00</u>
<u>Additional Amount Due =</u>	<u>\$81.25</u>

b. A blender who purchases diesel products from a supplier must pay the appropriate tax on all diesel products purchased. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for any additional amount due. The blender must also obtain a refund permit to receive a refund of any overpayment of tax on the blended

product. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 29¢ per gallon and the tax rate for diesel fuel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

<u>Blender purchases 7,120 gallons tax-paid petrodiesel (7,120 × .325) =</u>	<u>\$2,314.00</u>
<u>Blender purchases 880 gallons tax-paid biodiesel (880 × .29) =</u>	<u>\$255.20</u>
<u>Total tax paid on products =</u>	<u>\$2,569.20</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

<u>Total tax due on 8,000 gallons blended B-11 or higher (8,000 × .29) =</u>	<u>\$2,320.00</u>
<u>Amount of Refund Allowable =</u>	<u>\$249.20</u>

EXAMPLE 2.

<u>Blender purchases 7,600 gallons tax-paid petrodiesel (7,600 × .325) =</u>	<u>\$2,470.00</u>
<u>Blender purchases 400 gallons tax-paid biodiesel (400 × .29) =</u>	<u>\$116.00</u>
<u>Total tax paid on products =</u>	<u>\$2,586.00</u>

The blended product is 8,000 gallons of biodiesel blended fuel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

<u>Total tax due on 8,000 gallons blended B-5 (8,000 × .325) =</u>	<u>\$2,600.00</u>
<u>Additional Amount Due =</u>	<u>\$14.00</u>

EXAMPLE 3.

<u>Blender purchases 4,000 gallons tax-paid B-2 (4,000 × .325) =</u>	<u>\$1,300.00</u>
<u>Blender purchases 4,000 gallons tax-paid B-20 (4,000 × .29) =</u>	<u>\$1,160.00</u>
<u>Total tax paid on products =</u>	<u>\$2,460.00</u>

4,000 gallons of B-2 contains 80 gallons (2%) of biodiesel, and 4,000 gallons of B-20 contains 800 gallons (20%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 880 gallons (80 + 800, or 11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

<u>Total tax due on 8,000 gallons B-11 or higher (8,000 × .29) =</u>	<u>\$2,320.00</u>
<u>Amount of Refund Allowable =</u>	<u>\$140.00</u>

c. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has been blended with petrodiesel so that the mixture fails to qualify as B-11 or higher as defined in rule 701—67.1(452A), a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the biodiesel erroneously blended with petrodiesel is at least 10 percent of the total blended product by volume, the biodiesel and petrodiesel blended product is considered B-11 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of biodiesel blended with petrodiesel is less than 10 percent of the total blended product by volume, the entire mixture is considered taxable diesel other than B-11 or higher and subject to tax at the prevailing rate.

(3) This paragraph applies only if a blender intends to produce B-11 or higher. If a blender does not intend to produce B-11 or higher when blending biodiesel and petrodiesel, and the mixture contains less than 11 percent biodiesel by volume, no error has occurred and the mixture is subject to tax as diesel other than B-11 or higher.

(4) The following formulas are used to compute blending errors:

Actual biodiesel + actual petrodiesel = total gallons of blended product

Total gallons of blended product × .1 = required biodiesel

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend B-11 or higher. Figures are rounded to the nearest whole gallon; B-11 or higher is taxed at \$.29 per gallon; diesel other than B-11 or higher is taxed at \$.325 per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

<u>Actual petrodiesel</u>	=	<u>8,095 gal.</u>
<u>Actual biodiesel</u>	=	<u>905 gal.</u>
<u>Total blended product</u>	=	<u>9,000 gal.</u>
<u>9,000 × .1</u>	=	<u>900 gal. required biodiesel</u>

The actual biodiesel (905 gallons) is more than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

$$\frac{9,000 \text{ gal. of blended product}}{\times \$.29} = \underline{\$2,610 \text{ tax on B-11 or higher}}$$

EXAMPLE 2.

<u>Actual petrodiesel</u>	=	<u>8,105 gal.</u>
<u>Actual biodiesel</u>	=	<u>895 gal.</u>
<u>Total blended product</u>	=	<u>9,000 gal.</u>
<u>9,000 × .1</u>	=	<u>900 gal. required biodiesel</u>

The actual biodiesel (895 gallons) is less than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(2) as follows:

$$\frac{9,000 \text{ gal. of blended product}}{\times \$.325} = \underline{\$2,925 \text{ tax on diesel other than B-11 or higher}}$$

EXAMPLE 3.

A blender erroneously mixes 5,000 gallons of B-2 with 4,500 gallons of B-20 with the intent of creating B-11 or higher. 5,000 gallons of B-2 contains 100 gallons (2%) of biodiesel. 4,500 gallons of B-20 contains 900 gallons (20%) of biodiesel. Thus, the 9,500 gallons (4,500 + 5,000) of blended product includes 1,000 gallons (100 + 900) of biodiesel and 8,500 gallons (9,500 – 1,000) of petrodiesel.

<u>Actual petrodiesel</u>	=	<u>8,500 gal.</u>
<u>Actual biodiesel</u>	=	<u>1,000 gal.</u>
<u>Total blended product</u>	=	<u>9,500 gal.</u>
<u>9,500 × .1</u>	=	<u>950 gal. required biodiesel</u>

The actual biodiesel (1,000 gallons) is greater than the required biodiesel (950 gallons), which means that the entire blend is considered B-11 or higher and the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

$$\begin{array}{rcl} \underline{9,500 \text{ gal. of blended product}} & \equiv & \underline{\$2,755 \text{ tax on B-11 or higher}} \\ \times \underline{\$.29} & & \end{array}$$

This rule is intended to implement Iowa Code section 452A.8 as amended by ~~1995 Iowa Acts, chapter 155~~ 2015 Iowa Acts, Senate File 257.

ITEM 8. Amend rule 701—68.13(452A) as follows:

701—68.13(452A) Reduction of refund—sales and use tax. Under Iowa Code section ~~422.45(41)~~ 423.3(56), the ~~gross receipts~~ sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid, and no refund has been or will be allowed, ~~are~~ is exempt from Iowa sales and use tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section ~~422.42(3) or 422.45~~ 423.3 (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales and use tax. See sales tax rule 701—18.37(422,423). The ~~sale base~~ sales price upon which the sales and use tax will be applied shall include all federal excise taxes, but will not include the Iowa motor vehicle fuel tax. *W. M. Gurley v. Army Rhoden*, 421 U.S. 200-44 L.Ed. 110, 95 S.Ct. 1605 (1975).

This rule is intended to implement Iowa Code section 452A.17 as amended by ~~1995 Iowa Acts, chapter 155~~.

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